

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID SLY MCENESPY,

Defendant and Appellant.

C079539

(Super. Ct. No. NCR93714)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Having reviewed the record as required by *Wende*, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

**FACTUAL AND PROCEDURAL BACKGROUND**

Defendant David Sly McEnespy lived with his girlfriend. Together, they had two children and she had three older children from a previous relationship. On March 1, 2015, defendant and his girlfriend were drinking vodka. Defendant, angry over how his girlfriend was preparing dinner, lunged towards her, knocking the 10-year-old child to the

floor. Defendant repeatedly struck his girlfriend in the head and ribs. She was treated for a head injury at the hospital. Near the front door, a large knife was found. Several other knives were found in the house. An axe was found in defendant's bedroom.

Defendant pleaded guilty to child abuse (Pen. Code, § 273a, subd. (a);<sup>1</sup> count II) and infliction of corporal injury on a cohabitant (§ 273.5, subd. (a); count VI) in exchange for dismissal of the remaining charges (four more counts of child abuse; counts I, III, IV, V) and allegations (personal infliction of great bodily injury in connection with count VI). The parties stipulated to a state prison sentence of five years, execution suspended, and a grant of probation with 180 days in county jail. Defendant admitted violating probation in misdemeanor case No. NCR90390 as a result of his convictions.

The trial court sentenced defendant to the midterm of four years for count II and a consecutive one-third the midterm or one year for count VI. The court suspended execution of sentence and granted probation for a term of five years subject to certain terms and conditions including 180 days in county jail. The trial court awarded 51 actual days and 50 conduct days for a total of 101 days of credit. The trial court terminated probation in case No. NCR90390.

The trial court granted his request for a certificate of probable cause. (§ 1237.5.)

### **WENDE REVIEW**

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we

---

<sup>1</sup> Undesignated statutory references are to the Penal Code in effect at the time of the charged offenses.

received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

**DISPOSITION**

The judgment is affirmed.

MURRAY, J.

We concur:

RAYE, P. J.

HULL, J.